

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 864

By: Corn

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5  
6 AS INTRODUCED

7 An Act relating to public finance; creating the Rural  
8 Oklahoma Opportunity Fund Act; providing short title;  
9 establishing intent; creating Rural Oklahoma  
10 Opportunity Fund and providing for contents thereof;  
11 requiring Oklahoma Tax Commission to make specified  
12 transfer of funds; defining term; creating Rural  
13 Oklahoma Opportunity Fund Committee and providing for  
14 membership thereof; providing for terms and  
15 appointment of new members under certain  
16 circumstances; requiring certain member to serve as  
17 chair and to call certain meeting by specified date;  
18 establishing quorum requirements and requirements for  
19 members with conflict of interest; providing for  
20 staff support and travel reimbursement; setting out  
21 duties of committee; authorizing committee to grant  
22 certain funds under specified circumstances;  
23 establishing requirements for jurisdictions applying  
24 for a grant; defining term; requiring preparation of  
certain report by Oklahoma Department of Commerce;  
amending 68 O.S. 2001, Section 3604, as last amended  
by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.  
2008, Section 3604), which relates to the Oklahoma  
Quality Jobs Program Act; requiring the Department of  
Commerce to conduct specified cost/benefit analysis  
during certain time period and specifying contents  
thereof; requiring Department of Commerce to certify  
certain amount; providing for codification; providing  
an effective date; and declaring an emergency.

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24 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1           SECTION 1.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 48A of Title 62, unless there is  
3 created a duplication in numbering, reads as follows:

4           A. This act shall be known and may be cited as the "Rural  
5 Oklahoma Opportunity Fund Act".

6           B. It is the intent of the Legislature that when the use of  
7 state incentives are provided to a professional sports organization  
8 which will locate in a specified area but provide benefits for the  
9 entire state, that such benefits be shared to the extent possible by  
10 rural areas.

11           C. There is hereby created in the State Treasury a revolving  
12 fund for the Oklahoma Department of Commerce to be designated the  
13 "Rural Oklahoma Opportunity Fund". The fund shall be a continuing  
14 fund, not subject to fiscal year limitations and shall consist of  
15 all monies deposited to the credit of the fund by the Oklahoma Tax  
16 Commission. The Tax Commission is hereby authorized and directed to  
17 withhold a portion of the taxes levied and collected pursuant to  
18 Sections 1354 and 2355 of Title 68 of the Oklahoma Statutes equal to  
19 the net amount determined pursuant to paragraph 2 of subsection I of  
20 Section 3604 of Title 68 of the Oklahoma Statutes, and to deposit  
21 such amount to the credit of the Rural Oklahoma Opportunity Fund.

22           D. At the beginning of the first fiscal year after the Oklahoma  
23 Department of Commerce conducts a cost/benefit analysis and makes a  
24 determination pursuant to paragraph 2 of subsection I of Section

1 3604 of Title 68 of the Oklahoma Statutes, and every year  
2 thereafter, the Tax Commission shall transfer to the Rural Oklahoma  
3 Opportunity Fund an amount determined by the Department of Commerce  
4 as the net amount of state sales and income tax revenue generated by  
5 the location in this state of an establishment defined or classified  
6 in the NAICS Manual under U.S. Industry No. 711211 (2007 version)  
7 and participating in the Quality Jobs program. For the purposes of  
8 this act, "net amount of state sales and income tax revenue" shall  
9 mean a determination by the Department of the direct and indirect  
10 tax revenues which have accrued, less the costs which have accrued  
11 and the amounts of any incentive payments made pursuant to the  
12 Quality Jobs Program Act, as a result of new direct jobs which  
13 result from the location in this state of an establishment defined  
14 or classified in the NAICS Manual under U.S. Industry No. 711211  
15 (2007 version) and participating in the Quality Jobs program.

16 E. 1. There is hereby created a seven-member Rural Oklahoma  
17 Opportunity Fund Committee. The membership of the Committee shall be  
18 as follows:

- 19 a. the Director of the Oklahoma Department of  
20 Transportation,
- 21 b. the Chairman of the Oklahoma Tax Commission,
- 22 c. the Director of the Oklahoma Department of Commerce,
- 23 d. one county commissioner from a county with a  
24 population of less than seventy-five thousand (75,000)

1 according to the last preceding Federal Decennial  
2 Census or any future Federal Census, which is located  
3 north of Interstate Highway 40, to be appointed by the  
4 Governor from a list of three (3) qualified persons  
5 submitted by the Association of County Commissioners  
6 of Oklahoma,

7 e. one county commissioner from a county with a  
8 population of less than seventy-five thousand (75,000)  
9 according to the last preceding Federal Decennial  
10 Census or any future Federal Census, which is located  
11 south of Interstate Highway 40, to be appointed by the  
12 Governor from a list of three (3) qualified persons  
13 submitted by the Association of County Commissioners  
14 of Oklahoma,

15 f. one mayor from a city which is in a county with a  
16 population of less than seventy-five thousand (75,000)  
17 according to the last preceding Federal Decennial  
18 Census or any future Federal Census, which is located  
19 west of Interstate Highway 35, to be appointed by the  
20 Governor from a list of three (3) qualified persons  
21 submitted by the Oklahoma Municipal League, and

22 g. one mayor from a city which is in a county with a  
23 population of less than seventy-five thousand (75,000)  
24 according to the last preceding Federal Decennial

1 Census or any future Federal Census, which is located  
2 east of Interstate Highway 35, to be appointed by the  
3 Governor from a list of three (3) qualified persons  
4 submitted by the Oklahoma Municipal League.

5 The members appointed pursuant to subparagraphs d, e, f and g of  
6 this paragraph shall serve four year terms unless such member leaves  
7 elected office, in which case the appointing authority shall appoint  
8 a new member to serve out the remainder of the unexpired term;  
9 provided, the initial term for members initially appointed pursuant  
10 to subparagraphs d and f shall be six years.

11 2. The Director of the Department of Commerce shall chair the  
12 Committee. The chair shall call the first meeting of the Committee  
13 by July 1, 2010 or by July 1 of the first year following the  
14 location in this state of an establishment defined or classified in  
15 the NAICS Manual under U.S. Industry No. 711211 (2007 version).  
16 Thereafter, the Committee shall meet at the call of the chair. Five  
17 of the members of the Committee shall constitute a quorum to  
18 transact business and no action may be taken by the Committee unless  
19 it receives the approval of at least five members. Any member  
20 experiencing a conflict of interest on consideration of an  
21 application shall refrain from deliberation and abstain from voting  
22 on the matter.

23 3. The Department of Commerce shall provide such staff support  
24 as is required by the Committee.

1 4. The members of the Committee shall receive no compensation  
2 for serving, but shall receive travel reimbursement by their  
3 appointing authorities for necessary travel expenses incurred in the  
4 performance of their duties in accordance with the State Travel  
5 Reimbursement Act.

6 5. It is the duty of the Committee to consider applications  
7 from eligible jurisdictions for grants. If the Committee approves an  
8 application, it may grant funds available in the Rural Oklahoma  
9 Opportunity Fund to one or more eligible jurisdictions for:

- 10 a. payment of costs associated with infrastructure which  
11 will be directly related to the location of an  
12 eligible establishment, or
- 13 b. to provide funds to an eligible jurisdiction for  
14 direct payments to an eligible establishment which are  
15 considered necessary to secure the location of the  
16 establishment in the jurisdiction.

17 6. In order to apply for a grant pursuant to paragraph 5 of  
18 this subsection, a jurisdiction shall:

- 19 a. be either a county with a population of less than  
20 seventy-five thousand (75,000) according to the last  
21 preceding Federal Decennial Census or any future  
22 Federal Census or be a city or town entirely located  
23 within such a county, and

1 b. demonstrate by a written agreement between the  
2 jurisdiction and an eligible establishment, and to the  
3 satisfaction of the Department, that the establishment  
4 intends to:

5 (1) locate within the jurisdiction,

6 (2) compensate employees with an average wage which  
7 is at least one hundred percent (100%) of the  
8 average county wage as that percentage is  
9 determined by the Oklahoma State Data Center  
10 based upon the most recent U.S. Department of  
11 Commerce data for the county in which the jobs  
12 are located, and

13 (3) invest or create new direct jobs, as defined in  
14 paragraph 3 of subsection A of Section 3603 of  
15 Title 68 of the Oklahoma Statutes, as follows:

16 (a) in a city or town with a population of no  
17 more than five thousand (5,000) according to  
18 the last preceding Federal Decennial Census  
19 or any future Federal Census, make an  
20 investment of at least Two Hundred Fifty  
21 Thousand Dollars (\$250,000.00) or create at  
22 least five (5) direct new jobs,

23 (b) in a city or town with a population of  
24 greater than five thousand (5,000) and less

1 than ten thousand (10,000) according to the  
2 last preceding Federal Decennial Census or  
3 any future Federal Census, make an  
4 investment of at least Five Hundred Thousand  
5 Dollars (\$500,000.00) or create at least ten  
6 (10) direct new jobs,

7 (c) in a city or town with a population of  
8 greater than ten thousand (10,000) and less  
9 than forty thousand (40,000) according to  
10 the last preceding Federal Decennial Census  
11 or any future Federal Census, make an  
12 investment of at least Seven Hundred Fifty  
13 Thousand Dollars (\$750,000.00) or create at  
14 least fifteen (15) direct new jobs, or

15 (d) in a city or town with a population of  
16 greater than forty thousand (40,000)  
17 according to the last preceding Federal  
18 Decennial Census or any future Federal  
19 Census, make an investment of at least One  
20 Million Dollars (\$1,000,000.00) or create at  
21 least twenty (20) direct new jobs.

22 For purposes of this section, an "eligible establishment" is one  
23 which meets the definition of a basic industry as provided in  
24

1 paragraph 1 of subsection A of Section 3603 of Title 68 of the  
2 Oklahoma Statutes.

3 7. The Oklahoma Department of Commerce shall prepare annually a  
4 report which shall include, but not be limited to, documentation of  
5 the number of applications made and funds granted from the Rural  
6 Oklahoma Opportunity Fund as well as the number and type of new jobs  
7 or investment resulting from such funds. The report shall be  
8 submitted to the President Pro Tempore of the Senate, the Speaker of  
9 the House of Representatives and the Governor of this state.

10 SECTION 2. AMENDATORY 68 O.S. 2001, Section 3604, as  
11 last amended by Section 5, Chapter 406, O.S.L. 2008 (68 O.S. Supp.  
12 2008, Section 3604), is amended to read as follows:

13 Section 3604. A. Except as otherwise provided in subsection I  
14 of this section, an establishment which meets the qualifications  
15 specified in the Oklahoma Quality Jobs Program Act may receive  
16 quarterly incentive payments for a ten-year period from the Oklahoma  
17 Tax Commission pursuant to the provisions of the Oklahoma Quality  
18 Jobs Program Act; provided, such an establishment defined or  
19 classified in the NAICS Manual under U.S. Industry No. 711211 (2007  
20 version) may receive quarterly incentive payments for a fifteen-year  
21 period. The amount of such payments shall be equal to the net  
22 benefit rate multiplied by the actual gross payroll of new direct  
23 jobs for a calendar quarter as verified by the Oklahoma Employment  
24 Security Commission.

1 B. In order to receive incentive payments, an establishment  
2 shall apply to the Oklahoma Department of Commerce. The application  
3 shall be on a form prescribed by the Department and shall contain  
4 such information as may be required by the Department to determine  
5 if the applicant is qualified. An establishment may apply for an  
6 effective date for a project, which shall not be more than twenty-  
7 four (24) months from the date the application is submitted to the  
8 Department.

9 C. Except as otherwise provided by subsection D or E of this  
10 section, in order to qualify to receive such payments, the  
11 establishment applying shall be required to:

12 1. Be engaged in a basic industry;

13 2. Have an annual gross payroll for new direct jobs projected  
14 by the Department to equal or exceed Two Million Five Hundred  
15 Thousand Dollars (\$2,500,000.00) within three (3) years of the first  
16 complete calendar quarter following the start date; and

17 3. Have a number of full-time-equivalent employees subject to  
18 the tax imposed by Section 2355 of this title and working an annual  
19 average of thirty (30) or more hours per week in new direct jobs  
20 located in this state equal to or in excess of eighty percent (80%)  
21 of the total number of new direct jobs.

22 D. In order to qualify to receive incentive payments as  
23 authorized by the Oklahoma Quality Jobs Program Act, an  
24 establishment engaged in an activity described under:

1 1. Industry Group Nos. 3111 through 3119 of the NAICS Manual  
2 shall be required to:

- 3 a. have an annual gross payroll for new direct jobs  
4 projected by the Department to equal or exceed One  
5 Million Five Hundred Thousand Dollars (\$1,500,000.00)  
6 within three (3) years of the first complete calendar  
7 quarter following the start date and make, or which  
8 will make within one (1) year, at least seventy-five  
9 percent (75%) of its total sales, as determined by the  
10 Incentive Approval Committee pursuant to the  
11 provisions of subsection B of Section 3603 of this  
12 title, to out-of-state customers or buyers, to in-  
13 state customers or buyers if the product or service is  
14 resold by the purchaser to an out-of-state customer or  
15 buyer for ultimate use, or to the federal government,  
16 unless the annual gross payroll equals or exceeds Two  
17 Million Five Hundred Thousand Dollars (\$2,500,000.00)  
18 in which case the requirements for purchase of output  
19 provided by this subparagraph shall not apply, and  
20 b. have a number of full-time-equivalent employees  
21 working an average of thirty (30) or more hours per  
22 week in new direct jobs equal to or in excess of  
23 eighty percent (80%) of the total number of new direct  
24 jobs; and

1           2. Division (4) of subparagraph a of paragraph 1 of subsection  
2 A of Section 3603 of this title, shall be required to:

- 3           a. have an annual gross payroll for new direct jobs  
4           projected by the Department to equal or exceed One  
5           Million Five Hundred Thousand Dollars (\$1,500,000.00)  
6           within three (3) years of the first complete calendar  
7           quarter following the start date, and
- 8           b. have a number of full-time-equivalent employees  
9           working an average of thirty (30) or more hours per  
10          week in new direct jobs equal to or in excess of  
11          eighty percent (80%) of the total number of new direct  
12          jobs.

13          E. 1. An establishment which locates its principal business  
14 activity within a site consisting of at least ten (10) acres which:

- 15          a. is a federal Superfund removal site,
- 16          b. is listed on the National Priorities List established  
17          under Section 9605 of Title 42 of the United States  
18          Code,
- 19          c. has been formally deferred to the state in lieu of  
20          listing on the National Priorities List, or
- 21          d. has been determined by the Department of Environmental  
22          Quality to be contaminated by any substance regulated  
23          by a federal or state statute governing environmental  
24

1 conditions for real property pursuant to an order of  
2 the Department of Environmental Quality,  
3 shall qualify for incentive payments irrespective of its actual  
4 gross payroll or the number of full-time-equivalent employees  
5 engaged in new direct jobs.

6 2. In order to qualify for the incentive payments pursuant to  
7 this subsection, the establishment shall conduct the activity  
8 resulting in at least fifty percent (50%) of its Oklahoma taxable  
9 income or adjusted gross income, as determined under Section 2358 of  
10 this title, whether from the sale of products or services or both  
11 products and services, at the physical location which has been  
12 determined not to comply with the federal or state statutes  
13 described in this subsection with respect to environmental  
14 conditions for real property. The establishment shall be subject to  
15 all other requirements of the Oklahoma Quality Jobs Program Act  
16 other than the exemptions provided by this subsection.

17 3. In order to qualify for the incentive payments pursuant to  
18 this subsection, the entity shall obtain from the Department of  
19 Environmental Quality a letter of concurrence that:

20 a. the site designated by the entity does meet one or  
21 more of the requirements listed in paragraph 1 of this  
22 subsection, and  
23  
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1           b.    the site is being or has been remediated to a level  
2                    which is consistent with the intended use of the  
3                    property.

4           In making its determination, the Department of Environmental  
5 Quality may rely on existing data and information available to it,  
6 but may also require the applying entity to provide additional data  
7 and information as necessary.

8           4.    If authorized by the Department of Environmental Quality  
9 pursuant to paragraph 3 of this subsection, the entity may utilize a  
10 remediated portion of the property for its intended purpose prior to  
11 remediation of the remainder of the site, and shall qualify for  
12 incentive payments based on employment associated with the portion  
13 of the site.

14          F.    Except as otherwise provided by subsection G of this  
15 section, for applications submitted on and after June 4, 2003, in  
16 order to qualify to receive incentive payments as authorized by the  
17 Oklahoma Quality Jobs Program Act, in addition to other  
18 qualifications specified herein, an establishment shall be required  
19 to pay new direct jobs an average annualized wage which equals or  
20 exceeds:

21          1.    One hundred ten percent (110%) of the average county wage as  
22 determined by the Oklahoma State Data Center based on the most  
23 recent U.S. Department of Commerce data for the county in which the  
24 new direct jobs are located. For purposes of this paragraph, health

1 care premiums paid by the applicant for individuals in new direct  
2 jobs shall be included in the annualized wage; or

3 2. One hundred percent (100%) of the average county wage as  
4 that percentage is determined by the Oklahoma State Data Center  
5 based upon the most recent U.S. Department of Commerce data for the  
6 county in which the new jobs are located. For purposes of this  
7 paragraph, health care premiums paid by the applicant for  
8 individuals in new direct jobs shall not be included in the  
9 annualized wage.

10 Provided, no average wage requirement shall exceed Twenty-five  
11 Thousand Dollars (\$25,000.00), in any county. This maximum wage  
12 threshold shall be indexed and modified from time to time based on  
13 the latest Consumer Price Index year-to-date percent change release  
14 as of the date of the annual average county wage data release from  
15 the Bureau of Economic Analysis of the U.S. Department of Commerce.

16 G. 1. As used in this subsection, "opportunity zone" means one  
17 or more census tracts in which, according to the most recent federal  
18 decennial census, at least thirty percent (30%) of the residents  
19 have annual gross household incomes from all sources below the  
20 poverty guidelines established by the U.S. Department of Health and  
21 Human Services. An establishment which is otherwise qualified to  
22 receive incentive payments and which locates its principal business  
23 activity in an opportunity zone shall not be subject to the  
24 requirements of subsection F of this section.

1 2. As used in this subsection:

2 a. "negative economic event" means:

3 (1) a man-made disaster or natural disaster as  
4 defined in Section 683.3 of Title 63 of the  
5 Oklahoma Statutes, resulting in the loss of a  
6 significant number of jobs within a particular  
7 county of this state, or

8 (2) an economic circumstance in which a significant  
9 number of jobs within a particular county of this  
10 state have been lost due to an establishment  
11 changing its structure, consolidating with  
12 another establishment, closing or moving all or  
13 part of its operations out of this state, and

14 b. "significant number of jobs" means Local Area  
15 Unemployment Statistics (LAUS) data, as determined by  
16 the Bureau of Labor Statistics, for a county which are  
17 equal to or in excess of five percent (5%) of the  
18 total amount of Local Area Unemployment Statistics  
19 (LAUS) data for that county for the calendar year, or  
20 most recent twelve-month period in which employment is  
21 measured, preceding the event.

22 An establishment which is otherwise qualified to receive  
23 incentive payments and which locates in a county in which a negative  
24 economic event has occurred within the eighteen-month period

1 preceding the start date shall not be subject to the requirements of  
2 subsection F of this section; provided, an establishment shall not  
3 be eligible to receive incentive payments based upon a negative  
4 economic event with respect to jobs that are transferred from one  
5 county of this state to another.

6 H. The Department shall determine if the applicant is qualified  
7 to receive incentive payments.

8 I. 1. If the applicant is determined to be qualified by the  
9 Department and is not subject to the provisions of subparagraph d of  
10 paragraph 7 of subsection A of Section 3603 of this title, the  
11 Department shall conduct a cost/benefit analysis to determine the  
12 estimated net direct state benefits and the net benefit rate  
13 applicable for a ten-year period beginning with the first complete  
14 calendar quarter following the start date and to estimate the amount  
15 of gross payroll for a ten-year period beginning with the first  
16 complete calendar quarter following the start date or for a fifteen-  
17 year period for an establishment defined or classified in the NAICS  
18 Manual under U.S. Industry No. 711211 (2007 version). In conducting  
19 such cost/benefit analysis, the Department shall consider  
20 quantitative factors, such as the anticipated level of new tax  
21 revenues to the state along with the added cost to the state of  
22 providing services, and such other criteria as deemed appropriate by  
23 the Department. In no event shall incentive payments, cumulatively,  
24 exceed the estimated net direct state benefits, except for

1 applicants subject to the provisions of subparagraph d of paragraph  
2 7 of subsection A of Section 3603 of this title.

3 2. In addition to the cost/benefit analysis required by  
4 paragraph 1 of this subsection and for purposes of the transfer of  
5 funds required by subsection C of Section 1 of this act, the  
6 Department shall conduct a cost/benefit analysis for any  
7 establishment defined or classified in the NAICS Manual under U.S.  
8 Industry No. 711211 (2007 version) after the end of the first twelve  
9 month period after such establishment begins receiving incentive  
10 payments pursuant to the Quality Jobs Program Act and at the end of  
11 every twelve month period thereafter. In addition to estimating the  
12 actual level of direct new tax revenues to the state along with the  
13 added cost to the state of providing services, the Department shall  
14 also consider indirect new tax revenues which have accrued to the  
15 state, including but not limited to revenues derived from sales of  
16 concessions at the facility where events are held and hotel, motel  
17 and transportation revenue generated and revenues derived from  
18 ancillary support jobs directly related to the location of such  
19 establishment. Based on the results of such analysis, the  
20 Department shall certify the net amount of both state sales and  
21 income tax revenue generated as the result of the location of such  
22 establishment in this state, excluding the amount of any incentive  
23 payments which were made to the establishment pursuant to the  
24 Quality Jobs Program Act during the preceding year.

1 J. Upon approval of such an application, the Department shall  
2 notify the Tax Commission and shall provide it with a copy of the  
3 contract and the results of the cost/benefit analysis. The Tax  
4 Commission may require the qualified establishment to submit such  
5 additional information as may be necessary to administer the  
6 provisions of the Oklahoma Quality Jobs Program Act. The approved  
7 establishment shall file quarterly claims with the Tax Commission  
8 and shall continue to file such quarterly claims during the ten-year  
9 incentive period to show its continued eligibility for incentive  
10 payments, as provided in Section 3606 of this title, or until it is  
11 no longer qualified to receive incentive payments. The  
12 establishment may be audited by the Tax Commission to verify such  
13 eligibility. Once the establishment is approved, an agreement shall  
14 be deemed to exist between the establishment and the State of  
15 Oklahoma, requiring the continued incentive payment to be made as  
16 long as the establishment retains its eligibility as defined in and  
17 established pursuant to this section and Sections 3603 and 3606 of  
18 this title and within the limitations contained in the Oklahoma  
19 Quality Jobs Program Act, which existed at the time of such  
20 approval.

21 K. A municipality with a population of less than one hundred  
22 thousand (100,000) persons in which an establishment eligible to  
23 receive quarterly incentive payments pursuant to the provisions of  
24 this section is located may file a claim with the Tax Commission for

1 up to twenty-five percent (25%) of the amount of such payment. The  
2 amount of such claim shall not exceed amounts paid by the  
3 municipality for direct costs of municipal infrastructure  
4 improvements to provide water and sewer service to the  
5 establishment. Such claim shall not be approved by the Tax  
6 Commission unless the municipality and the establishment have  
7 entered into a written agreement for such claims to be filed by the  
8 municipality prior to submission of the application of the  
9 establishment pursuant to the provisions of this section. If such  
10 claim is approved, the amount of the payment to the establishment  
11 made pursuant to the provisions of Section 3606 of this title shall  
12 be reduced by the amount of the approved claim by the municipality  
13 and the Tax Commission shall issue a warrant to the municipality in  
14 the amount of the approved claim in the same manner as warrants are  
15 issued to qualifying establishments.

16 SECTION 3. This act shall become effective July 1, 2009.

17 SECTION 4. It being immediately necessary for the preservation  
18 of the public peace, health and safety, an emergency is hereby  
19 declared to exist, by reason whereof this act shall take effect and  
20 be in full force from and after its passage and approval.

21

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